



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 870 OF 2013**

**IN THE MATTER OF THE ESTATE OF NJOROGE GICHUHI (DECEASED)**

**RULING**

1. The two applications for determination are dated 16<sup>th</sup> September 2013 and 17<sup>th</sup> May 2016.
2. The application dated 16<sup>th</sup> September 2013 seeks two principal orders: that Nancy Wanjiru Njoroge, the administrator of the estate, be restrained from collecting the estate or dealing with it, and that the limited grant of letters of administration *ad colligenda bona* made to her on 12<sup>th</sup> August 2013 be revoked or annulled. The application is brought at the instance of Sophia Wanjiru Njoroge, who argues that the said limited grant was obtained fraudulently as there was already pending another cause in the estate of the deceased, being HCSC No. 620 of 2012. Both the applicant and the administrator claim to be widows of the deceased.
3. In her reply, the administrator acknowledges the applicant as her co-widow, but complains that after their husband died she refused to cooperate with her regarding the affairs of the estate. She avers that HCSC No. 620 of 2012 is no longer pending as it was exhausted after the court made orders on 8<sup>th</sup> October 2012 requiring the widows to apply for representation within thirty (30) days. She states that she opted to go it alone after it became apparent that the applicant was unwilling to petition for administration jointly with her.
4. The application dated 17<sup>th</sup> May 2016 is at the instance of Nancy Wanjiru Njoroge against Sophia Wanjiru Njoroge. It seeks that she be restrained from dealing with or disposing of a parcel land in Kisaju, Kajiado, being Kajiado/Kisaju/3146. She also prays that the full grant be made to her. She alleges that her co-widow is in the process of selling part of the subject land which she alleges forms part of the estate of the deceased.
5. Sophia Wanjiru Njoroge responded to that application by her affidavit sworn on 27<sup>th</sup> June 2016. She does not address the matter raised in the application, but rather stresses that there is another pending succession cause. In addition, she filed a notice of preliminary objection on a point of law of even date.
6. It was directed on 29<sup>th</sup> June 2016 that both applications be disposed of simultaneously by way of written submissions. Both sides have filed their written submissions complete with authorities. I have perused through the same and noted the arguments advanced in both sets of written submissions.
7. I have taken cognizance of the fact that the combatants herein are widows of the deceased. Each of them appears to have filed a cause in the estate of the deceased. I am surprised that although counsel appearing in the matter were all along aware of the parallel proceedings chose not to bring it to the attention of the court, and to ask for directions thereon. The two causes should have been consolidated way back in 2013 when the application dated 16<sup>th</sup> September 2013 was first brought to court. That failure has unnecessarily caused the matter of the estate herein to drag on. Counsel are under a duty to disclose such matters to the court once they come to their attention. There is no doubt dereliction of duty on their part.
8. Before I can make orders on one way or the other on the applications before me, the two causes should be put together, for there should never be two causes in respect of the same estate. The final order shall be that the Deputy Registrar shall cause the court file in HCSC No. 620 of 2012 to be traced and put

together with the court file in respect of the instant cause. The matter shall thereafter be mentioned on a date to be given at the delivery of this ruling.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>TH</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**